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If this is severance pay, I don't think that it is appropriate to focus exclusively in the writeup on section 104(a) and the fact that these payments are not excludable from income as compensation for injuries or sickness. If no one has claimed that the payments are excludable from income and wages based on section 104(a), then it may not be necessary to discuss in detail that the section 104(a) exclusion only applies where there is actual personal physical injury or sickness and the claim must be based on tort or tort-type rights. On the other hand, discussing this doesn't hurt - especially if the claimant has alleged that the amounts are excludable from income as compensation for injuries or sickness.

In any event, I think it would be appropriate to add information about the employment tax treatment of severance pay. Section 31.3401(a)-1(b)(4) of the Employment Tax Regulations provides that any payments made by an employer to an employee on account of dismissal, i.e., involuntary separation for the service of the employer, constitute wages for income tax withholding purposes regardless of whether the employer is legally bound by contract, statute, or otherwise, to make such payments. Severance pay, like the pay it replaces, is includible in gross income and is wages for FICA and income tax withholding purposes. See e.g., Abrahamsen v. United States, 228 F.3d 1360 (Fed. Cir. 2000).